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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. It is the intent and purpose of the legislature  
2 to establish a qualified tax exempt savings program to encourage  
3 and assist individuals and families to save private funds to  
4 support individuals with disabilities pursuant to section 529 of  
5 the Internal Revenue Code of 1986, as amended, or successor  
6 legislation, and any regulations promulgated thereunder. It is  
7 the further intent of the legislature that the program  
8 established by this Act be and remain in conformance with the  
9 Stephen Beck, Jr., Achieving a Better Life Experience Act of  
10 2014, Division B of Public Law No. 113-295.

11       SECTION 2. The Hawaii Revised Statutes is amended by  
12 adding a new chapter to be appropriately designated and to read  
13 as follows:

14                               "CHAPTER

15                               HAWAII ABLE SAVINGS PROGRAM

16       § -1 Definitions. As used in this chapter, unless the  
17 context otherwise requires:



1 "Account" or "ABLE savings account" means an individual  
2 savings account established in accordance with this chapter.

3 "Account owner" means the person who enters into a savings  
4 agreement pursuant to this chapter.

5 "Designated beneficiary" means a resident of the State  
6 whose qualified disability expenses may be paid from the  
7 account.

8 "Director" means the director of finance.

9 "Eligible individual" means an individual who is entitled  
10 to benefits based on blindness or disability under title 42  
11 United States Code section 401 et seq. or title 42 United States  
12 Code section 1381 et seq., as amended, and for whom blindness or  
13 disability occurred before the date on which the individual  
14 attained the age of twenty-six, or an individual who filed for  
15 the taxable year, a disability certification with and to the  
16 satisfaction of the secretary.

17 "Financial organization" means an organization authorized  
18 to do business in the State that is:

- 19 (1) Licensed or chartered by the insurance commissioner;  
20 (2) Licensed or chartered by the commissioner of financial  
21 institutions;



(3) Chartered by an agency of the federal government; or

(4) Subject to the jurisdiction and regulation of the  
federal Securities and Exchange Commission.

"Management contract" means the contract executed by the  
director of finance and a financial organization selected to act  
as a depository and manager of the program.

"Member of the family" has the same meaning defined in  
section 529A of the Internal Revenue Code of 1986, as amended.

"Nonqualified withdrawal" means a withdrawal from an  
account that is not:

(1) A qualified withdrawal; or

(2) A rollover distribution.

"Program" means the Hawaii ABLE savings program established  
under this chapter.

"Program manager" means a financial organization selected  
by the director of finance to act as a depository and manager of  
the program.

"Qualified disability expense" means any qualified  
disability expense included in section 529A of the Internal  
Revenue Code of 1986, as amended.



1 "Qualified withdrawal" means a withdrawal from an account  
2 to pay the qualified disability expenses of the designated  
3 beneficiary of the account.

4 "Rollover distribution" means a rollover distribution as  
5 defined in section 529A of the Internal Revenue Code of 1986, as  
6 amended.

7 "Savings agreement" means an agreement between the program  
8 manager or the director of finance and the account owner.

9 "Secretary" means the secretary of the United States  
10 Department of the Treasury.

11 **§ -2 Hawaii ABLE savings program; establishment.** The  
12 director of finance shall establish the Hawaii ABLE savings  
13 program to provide for individual savings accounts that empower  
14 individuals with a disability and their families to save private  
15 funds to support the individual with a disability.

16 **§ -3 Functions and powers of the director of finance.**

17 (a) The director shall implement and administer the program  
18 under the terms and conditions established by this chapter and  
19 in conformity with federal law including the Stephen Beck, Jr.,  
20 Achieving a Better Life Experience Act of 2014, Division B of



1 P.L. 113-295, as it may be amended. The director shall have the  
2 authority and responsibility to:

3 (1) Develop and implement the program in a manner  
4 consistent with this chapter;

5 (2) Engage the services of consultants on a contract basis  
6 for rendering professional and technical assistance  
7 and advice;

8 (3) Seek rulings and other guidance from the secretary and  
9 the Internal Revenue Service relating to the program;

10 (4) Make any changes to the program required for the  
11 participants in the program to obtain the federal  
12 income tax benefits or treatment provided by section  
13 529A of the Internal Revenue Code of 1986, as amended;

14 (5) Charge, impose, and collect administrative fees and  
15 service charges in connection with any agreement,  
16 contract, or transaction relating to the program;

17 (6) Develop marketing plans and promotional material;

18 (7) Establish the methods by which the funds held in  
19 accounts shall be dispersed;

20 (8) Establish the method by which funds shall be allocated  
21 to pay for administrative costs;



1 (9) Conduct an annual evaluation of the program and  
2 prepare an annual report of the evaluation to be  
3 submitted to the governor and the legislature;

4 (10) Notify the secretary when an account has been opened  
5 for a designated beneficiary and submit other reports  
6 concerning the program required by the secretary;

7 (11) Do all things necessary and proper to carry out the  
8 purposes of this chapter; and

9 (12) Adopt rules pursuant to chapter 91 as necessary for  
10 the purposes of this chapter.

11 (b) The director may enter into agreements with other  
12 states to either allow residents of the State to participate in  
13 a comparable program operated by another state or allow  
14 residents of other states to participate in the Hawaii ABLE  
15 savings program.

16 (c) The director may implement the program through use of  
17 financial organizations as account depositories and managers.  
18 The director may solicit proposals from financial organizations  
19 to act as depositories and managers of the program. Financial  
20 organizations that submit proposals shall describe the  
21 investment instruments which will be held in accounts. The



1 director may select more than one financial organization and  
2 investment instrument for the program. The director shall  
3 select as program depositories and managers the financial  
4 organization or organizations, from among the bidding financial  
5 organizations, that demonstrate the most advantageous  
6 combination, both to potential program participants and the  
7 State, of the following factors:

- 8 (1) Financial stability and integrity of the financial  
9 organization;
- 10 (2) The safety of the investment instrument being offered;
- 11 (3) The ability of the financial organization to satisfy  
12 recordkeeping and reporting requirements;
- 13 (4) The financial organization's plan for promoting the  
14 program and the investment the organization is willing  
15 to make to promote the program;
- 16 (5) The fees, if any, proposed to be charged to the  
17 account owners;
- 18 (6) The minimum initial deposit and minimum contributions  
19 that the financial organization will require;



(7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of operation of the program.

(d) The director may enter into contracts and agreements with a financial organization or organizations necessary to implement this chapter.

**§ -4 Management contract; terms.** (a) A management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with the requirements of this chapter and take any action not contrary to the management contract to qualify as a qualified ABLE program as defined in section 529A of the Internal Revenue Code of 1986, as amended;

(2) Keep accurate records of each account, keep each account segregated from other accounts and provide the





1 director with the information necessary to prepare the  
2 statements required by section -5;

3 (3) Compile and total information contained in statements  
4 required to be prepared under section -5 and  
5 provide the compilations to the director;

6 (4) If there is more than one program manager, provide the  
7 director with the information necessary to determine  
8 compliance with section -5;

9 (5) Provide the director with access to the books and  
10 records of the program manager to the extent needed to  
11 determine compliance with the contract, this chapter,  
12 and section 529A of the Internal Revenue Code of 1986,  
13 as amended;

14 (6) Hold all accounts for the benefit of the account owner  
15 or owners;

16 (7) Be audited at least annually by a firm of certified  
17 public accountants selected by the program manager and  
18 provide the results of the audit to the director;

19 (8) Provide the director with copies of all regulatory  
20 filings and reports made by the financial organization  
21 during the term of the management contract or while



1 the financial organization is holding any accounts,  
2 other than confidential filings or reports that will  
3 not become part of the program. The program manager  
4 shall make available for review by the director the  
5 results of any periodic examination of the program  
6 manager by any state or federal banking, insurance, or  
7 securities commission, except to the extent that the  
8 report or reports may not be disclosed under law; and

9 (9) Ensure that any description of the program, whether in  
10 writing or through the use of any media, is consistent  
11 with a marketing plan developed pursuant to this  
12 chapter.

13 (b) The director of finance may:

14 (1) Enter into contracts as the director deems necessary  
15 and proper for the implementation of the program;

16 (2) Require that an audit be conducted of the operations  
17 and financial position of the program manager at any  
18 time if the director has any reason to be concerned  
19 about the financial position, the recordkeeping  
20 practices, or the status of accounts of the program  
21 manager; and



(3) Terminate or not renew a management agreement. If the director terminates or does not renew a management agreement, the director shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(c) The department of budget and finance, department of human services, department of health, and executive office on aging are authorized to exchange data regarding eligible individuals to carry out the purposes of this chapter.

**§ -5 Hawaii ABLE savings accounts; terms and conditions.**

(a) An ABLE savings account established pursuant to this chapter shall be opened by a designated beneficiary or by a trustee or guardian of a designated beneficiary who lacks capacity to enter into a contract; provided that the designated beneficiary shall be an eligible individual at the time the account is established. Each beneficiary may hold only one account. The director may establish a nonrefundable application fee and an annual fee for each account. An application for an



1 account shall be in the form specified by the director and shall  
2 contain:

3 (1) The name, address, and social security number of the  
4 account owner;

5 (2) The name, address, and social security number of the  
6 designated beneficiary, if the account owner is the  
7 beneficiary's trustee or guardian;

8 (3) Certification relating to no excess contributions; and

9 (4) Additional information as the director may require.

10 (b) Any person may make contributions to an ABLE savings  
11 account after the account is opened, subject to the limitations  
12 imposed by section 529A of the Internal Revenue Code of 1986, as  
13 amended, or any rules and regulations adopted by the secretary  
14 and applicable to this chapter.

15 (c) Contributions to an ABLE savings account may be made  
16 only in cash. The director or program manager shall reject or  
17 promptly withdraw contributions:

18 (1) If the contribution is in excess of the limits  
19 established pursuant to subsection (b);

20 (2) If total contributions cause the value of the account  
21 to be equal to or greater than the account maximum



1 established by the director. The account maximum must  
2 be equal to the account maximum for postsecondary  
3 education savings accounts established pursuant to  
4 chapter 256; or

5 (3) If the designated beneficiary is not an eligible  
6 individual in the current calendar year.

7 (d) An account owner may:

8 (1) Change the designated beneficiary of an account to an  
9 individual who is a member of the family of the prior  
10 designated beneficiary in accordance with procedures  
11 established by the director; and

12 (2) Transfer all or a portion of an account to another  
13 ABLE savings account, the designated beneficiary of  
14 which is a member of the family as defined in section  
15 529A of the Internal Revenue Code of 1986, as amended.

16 No account owner shall use an interest in an account as security  
17 for a loan. Any pledge of an interest in an account shall be of  
18 no force and effect.

19 (e) If there is any distribution from an account to any  
20 individual or for the benefit of any individual during a  
21 calendar year, the distribution shall be reported to the



1 Internal Revenue Service and to the account owner, designated  
2 beneficiary, or distributee to the extent required by state or  
3 federal law.

4 (f) Statements shall be provided to each account owner at  
5 least four times each year within thirty days after the end of  
6 the three-month period to which a statement relates. The  
7 statement shall identify the contributions made during the  
8 preceding three-month period, the total contributions made to  
9 the account through the end of the period, the value of the  
10 account at the end of the period, distributions made during the  
11 period, and any other information that the director requires to  
12 be reported to the account owner. Statements and information  
13 relating to accounts shall be prepared and filed to the extent  
14 required by this chapter and any other state or federal law.

15 (g) The program shall provide a separate accounting for  
16 each designated beneficiary.

17 § -6 Account funds. Moneys in an ABLE savings account:

18 (1) Shall be exempt from attachment, execution, or  
19 garnishment as provided by section 651-124; and

20 (2) May be claimed by the medicaid plan subject to  
21 limitations imposed by the secretary.



1       §   -7   Accounts not guaranteed by the State.   (a)   Nothing  
2   in this chapter shall create or be construed to create any  
3   obligation of the director, the State, or any agency or  
4   instrumentality of the State to guarantee for the benefit of any  
5   account owner or designated beneficiary with respect to the:

6       (1)   Return of principal;

7       (2)   Rate of interest or other return on any account; or

8       (3)   Payment of interest or other return on any account.

9       (b)   The director shall adopt rules to provide that every  
10   contract, application, or other similar document that may be  
11   used in connection with opening an account clearly indicates  
12   that the account is not insured by the State and that the  
13   principal deposited and the investment return are not guaranteed  
14   by the State.

15       §   -8   Hawaii ABLE savings program trust fund.   (a)   There  
16   is established the Hawaii ABLE savings program trust fund within  
17   the treasury of the State.   The fund shall consist of moneys  
18   received from an ABLE savings program manager, any governmental  
19   or private grants, and any general fund appropriations for the  
20   program.



1 (b) The fund shall be used if the director elects to  
2 accept deposits from contributors, rather than have deposits  
3 sent directly to the program manager. The fund shall consist of  
4 any moneys deposited by contributors in accordance with this  
5 chapter which are not deposited directly with the program  
6 manager.

7 (c) All interest derived from the deposit and investment  
8 of moneys in the savings program trust fund shall be credited to  
9 the fund. At the end of any fiscal year, all unexpended and  
10 unencumbered moneys in the savings program trust fund shall  
11 remain in the savings program trust fund and shall not be  
12 credited or transferred to the general fund or any other funds.

13 (d) All expenses incurred by the director in developing  
14 and administering the ABLE savings program shall be payable from  
15 the Hawaii ABLE savings program trust fund."

16 SECTION 3. Section 651-124, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§651-124 Pension money exempt.** The right of a debtor to  
19 a pension, annuity, retirement or disability allowance, death  
20 benefit, any optional benefit, or any other right accrued or  
21 accruing under any retirement plan or arrangement described in





1 section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in  
2 effect prior to January 1, 1984), 414(d), or 414(e) of the  
3 Internal Revenue Code of 1986, as amended, or any fund created  
4 by the plan or arrangement, or any ABLE savings account  
5 established pursuant to chapter , shall be exempt from  
6 attachment, execution, seizure, the operation of bankruptcy or  
7 insolvency laws under 11 United States Code section 522(b), or  
8 under any legal process whatever. However, this section shall  
9 not apply to:

- 10 (1) A "qualified domestic relations order" as defined in  
11 section 206(d) of the Employee Retirement Security Act  
12 of 1974, as amended, or in section 414(p) of the  
13 Internal Revenue Code of 1986, as amended; and  
14 (2) Contributions made to a plan or arrangement within the  
15 three years before the date a debtor files for  
16 bankruptcy, whether voluntary or involuntary, or  
17 within three years before the date a civil action is  
18 initiated against the debtor, except for contributions  
19 to a retirement plan established by state statute if  
20 the effect would be to eliminate a state employee's  
21 retirement service credit."



- 1 SECTION 4 . New statutory material is underscored.
- 2 SECTION 5 . This Act shall take effect on July 1, 2050.



**Report Title:**

Hawaii ABLE Savings Program; Individuals with a Disability and Families

**Description:**

Establishes the Hawaii ABLE Savings Program by authorizing the Director of Finance to establish savings accounts that empower individuals with a disability and their families to save private funds to support the individual with a disability. Creates the Hawaii ABLE Savings Program Trust Fund. Effective 7/1/2050.  
(SD1)

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